

IN THE DISTRICT COURT, DZODZE HELD ON TUESDAY THE 28TH OF FEBRUARY, 2022 BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE.

Case No. B4/15/21

THE REPUBLIC

VRS

EDWARD ANAGLI

JUDGMENT

PARTIES

COMPLAINANT PRESENT

ACCUSED PRESENT

REPRESENTATION

CHIEF INSPECTOR HAMID MOHAMMED FOR PROSECUTION PRESENT

BACKGROUND

On 5th of February, 2021, the accused person was arraigned before this Court on a charge of assault contrary to Section 84 of the Criminal Offences Act, 1960 (Act 29).

BRIEF FACTS

The brief facts as narrated by Prosecution indicates that the complainant is a farmer from Dekporyia while the accused person is also a farmer and a resident of the same community.

The Prosecution stated that on the 9th of December, 2020 at about 1130 hours, the complainant and accused met at a junction while the accused was on the way to the farm.

The Prosecution stated that sometime prior to their meeting, the complainant had her crops destroyed by an unknown person and had always suspected the accused to be the person responsible for the damages.

The Prosecution stated that, upon meeting the accused, the complainant made a statement to the effect that “God will judge whoever destroyed her crops”, and the accused took offence because every time the complainant sees him she makes those comments.

The Prosecution stated that, the accused confronted the complainant this time on her comment which resulted in a scuffle between them and in the process the accused used a club he was holding to hit the head of the complainant.

The Prosecution stated that the complainant screamed for help and the Unit Committee member, one Godwin Alavi who appeared at the scene saw the complainant in the armpit of the accused.

The Prosecution stated further that the complainant was rescued by Godwin Alavi and the complainant upon reporting the matter to the police was issued a medical form to attend hospital for treatment, which was later returned to the police duly endorsed.

The prosecution stated that, the accused after his arrest denied the offence and stated that, he was rather assaulted by the complainant.

The accused was charged for court and pleaded not guilty to the charge when the particulars of the offence was read and interpreted to him.

THE CASE OF PROSECUTION

The prosecution called two witnesses comprising the complainant, the Unit Committee member Godwin Alavi and the Police Investigator.

The complainant stated that, for some time now, she had not been in talking terms with the accused because she suspected him to be the one who sprayed chemicals on the crop she had cultivated.

The complainant stated that on the 9th of December, 2020 at about 1120 hours, she met the accused on the way whiles returning from the farm.

PW1 stated that prior to meeting the accused, she made a comment to the effect that whoever sprayed the chemical on her crops will surely be judged by God.

PW1 stated that the accused took offence and in response asked if she was the owner of the land she was farming on before making those comments.

PW1 stated that, the incident resulted in an altercation between them as a result of which the accused pulled out a cutlass and she run shouting for help.

PW1 stated that whiles running, she came across a club and took it to defend herself but the accused collected it from her, pushed her to the ground and used the club to hit her forehead.

PW1 stated that she shouted for help and PW2 who came to the scene rescued her from the accused and collected the cutlass and the club from him.

PW1 stated that she reported the incident to the police and was issued a medical form to attend hospital for treatment.

In his evidence in chief, PW2 stated that on the 9th of December, 2020 around 0900 hours, she was returning from his farm when she heard PW1 shouting and calling for help.

PW2 stated that upon reaching the scene, he saw PW1 held in the armpit by the accused while the accused was holding a club with a cutlass lying by him on the ground.

PW2 stated that she took the cutlass and threw it into the bush and also collected the club from the accused but he did not see the accused hitting PW1 with the club.

CASE OF ACCUSED

The accused stated in defence that whiles on his way to the farm on the said date, he met the complainant on the way and upon seeing him she called him by name, insulted him and stated further that he is a bad person.

The accused stated to avoid conflict he did not say anything but by passed the complainant. However, whiles going the complainant followed him and hit him with the stick of a hoe she was holding.

The accused stated that when she retrieved the hoe from the complainant, she shouted for help and PW2 who surfaced at the scene collected the hoe he had retrieved from the complainant from him.

The accused stated that complainant removed her slippers and wanted to hit him with it but PW2 stopped her and asked him to leave so he left without saying anything.

The accused stated that the complainant has always been accusing him to be the one who destroyed her farm by spraying chemicals on her plants but he does not know anything about that incident.

He stated further that, his farm does not share boundary with that of the complainant and there is also no dispute between them over any farm land to cause him to do any such thing.

FACTS

In the case of **Quaye v. Mariamu (1961) GLR 93, SC. per Van Lare JSC at page 95** it was stated that *“it is the duty of a trial judge to make up his mind one way or the other on the primary facts and when he has made up his mind, he should state his findings and proceed to apply the law...”*.

From the evidence of witnesses for prosecution and the accused, the court finds that the following facts are not in dispute;

- a. That both the complainant and the accused are farmers and residents of Dekporyia.
- b. That the complainant had always suspected the accused person as the one who sprayed chemicals on her crops and caused damage to her farm
- c. The accused person however denies that allegation
- d. That on 9th December, 2020 there was an altercation between the complainant and the accused on her way from the farm

- e. That the altercation degenerated into a physical confrontation as a result of which complainant alleges that she was hit by the accused with a club.
- f. That the accused denies the allegation and states that she only retrieved the club from the complainant who used same to hit him initially but he did not hit her in return.

THE LAW AND EVIDENCE OF PROSECUTION

Burden of Proof

In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind will find the existence of the facts beyond reasonable doubt. *See Section 11(2) of the Evidence Act, 1975 (NRCD 323) and the cases of Kingsley Amankwah (a.k.a Spider) v. The Republic [2021] DLSC10793 at pages 25-26 per Dotse JSC and Frimpong alias Iboman v. The Republic [2012] 1 SCGLR 297.*

In the case of **Ali Yussuf Issa (No.2) v. The Republic [2003-2004] SCGLR 174**, it was held that the burden of proof has two components, the duty to lead evidence on any fact required to be proved and the duty to provide sufficient evidence to persuade a reasonable mind as to the existence of any such fact. **See also Kweku Quaye alias Torgbe vs. The Republic [2021] DLSC10794 at page 9-10 per Prof. Mensa Bonsu, JSC.**

Section 13(1) of the Evidence Act 1975 (NRCD 323) provides the extent of proof or the burden on the prosecution in a criminal action thus;

“In civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt”.

The extent of the onus on the defence on the other hand is provided by section 13(2) of the evidence Act 1975 which states;

“Except as provided in section 15(c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt”. See also COP v. Antwi [1961] GLR 408.

Assault

A person who unlawfully assaults any person commits a misdemeanor under section 84 of the Criminal Offences Act, 1960 (Act 29).

A person commits an assault and battery on another person, if without the other person's consent and with the intention of causing harm, pain or fear or annoyance to the other person or of exciting him to anger, that person forcibly touches the other person. **Section 86 of the Criminal Offences Act, 1960 (Act 29).**

ANALYSIS AND APPLICATION OF LAW

For the purposes of the offence of assault and battery, the burden is on the prosecution to prove that without the consent of the complainant, and with the intention of causing harm, pain or fear or annoyance to him or exciting him to anger, the accused forcibly touched him.

In effect, a touch alone without proof of intention on the part of the accused to cause harm, pain or fear or annoyance to the complainant, or exciting him to anger, cannot support a charge of assault and battery.

The element of intention required to be satisfied under section 86 of the Criminal Offences Act is a specific intent and it would be sufficient if prosecution is able to establish some amount of recklessness on the part of the accused.

The prosecution in its effort to establish his case called PW2 as a witness.

In his own evidence in chief, PW2 stated that he did not see the accused hit PW1 with any club. However, he stated that when he arrived at the scene he saw the complainant in the armpit of the accused.

The accused person explained that she had retrieved from the complainant a club she hit him with prior to the arrival of PW2. The explanation is consistent with the evidence of PW1 who stated that while she was being pursued by the accused she picked up a stick to defend herself and the accused person collected it from her and hit her with same.

The accused person also stated that it was rather the complainant who pursued him and hit him with the club which he retrieved from her prior to the arrival of PW2.'

PW2 gave evidence only in respect of what he saw when he arrived at the scene and not on matters that occurred prior to his arrival. In testifying to what he saw upon arrival, he stated that he did not see the accused hit PW1 with a stick.

The accused also called as a witness Edo Avorkliya his wife who claimed she witnesses the incident because she accompanied the accused to the farm on that day. Although the accused failed to mention in his evidence in chief that he was in the company of his wife when the incident occurred, the court finds that, that fact is stated in his cautioned statement granted to the police on 13th January, 2021.

The evidence given by the witness for the accused confirmed the story as narrated by the accused that it was PW1 who upon meeting them on their way to the farm started using some derogatory words against her husband.

DW2 stated further that PW1 hit her husband with a stick and while attempting to retrieve same from her, she shouted for help and PW2 surfaced at the scene. The witness had her witness statement adopted and was subject to cross examination by prosecution on 23rd January, 2023.

The cross examination by prosecution however failed to cast doubts on the truthfulness of the claim by DW2 to have witnessed the incident. **(Check volume 14 at page 72).**

With the allegation by both complainant and the accused that they had been hit by each other with a club, the court in addition to the facts will only have and evidence given by the parties and their witnesses also relied on the medical report tendered in evidence by PW3, the investigator, in its determination of the issue.

The complainant claims to have been hit on the forehead with a stick by the accused. However, the medical report tendered in evidence does not suggest any bruises or pain anywhere near her head.

Her own initial report to the medical officer prior to checking and treatment is captured by the medical officer as follows;

“Client alleged to have been assaulted by a neighbor resulting in waist pain, knee pain and generalized body ache”.

Based on her own report, the complainant was treated on waist pain, right knee pain and generalized body ache.

The above observations and treatment by the medical officer although capable of resulting from assault are also capable of resolution from the alleged scuffle which the plaintiff claim resulted from the complainant's provocation.

In the circumstance, the court holds that although the case of the prosecution in respect of a contact on PW1 by the accused is established, the facts does not support the requirement recklessness and specific intention on the part of the accused to assault PW1 but rather the possibility of an unlawful fight between both parties.

The accused is therefore acquitted and discharged on the charge brought against him.

NELSON DELASI AWUKU
MAGISTRATE